

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Greg Finch	Team: Squad #9	CCRB Case #: 201810315	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/09/2018 7:08 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 61	18 Mo. SOL 6/9/2020	EO SOL 1/24/2021	
Date/Time CV Reported Tue, 12/11/2018 9:41 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 12/11/2018 9:41 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Richard Moore	26107	947811	061 PCT
2. POM Thomas Hionas	17202	958698	061 PCT
3. SGT Michelle Figueroa	03963	948964	061 PCT
4. POM Agron Pervizi	31882	957029	061 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Basim Elsayaby	16787	957563	062 PCT
2. POM Samadh Alauddin	03324	963359	061 PCT
3. POM Ryan Caine	07700	963425	061 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Richard Moore	Abuse: Police Officer Richard Moore failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
B.SGT Michelle Figueroa	Abuse: Sergeant Michelle Figueroa entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.SGT Michelle Figueroa	Abuse: Sergeant Michelle Figueroa searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D.SGT Michelle Figueroa	Abuse: Sergeant Michelle Figueroa entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
E.SGT Michelle Figueroa	Abuse: Sergeant Michelle Figueroa failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
F.SGT Michelle Figueroa	Abuse: Sergeant Michelle Figueroa forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

Case Summary

§ 87(2)(b) called the CCRB and filed this complaint on December 11, 2018. On December 9, 2018, at approximately 6:30 p.m., § 87(2)(b) called 911 in regards to a family dispute at her residence at § 87(2)(b) in Brooklyn with her sister, § 87(2)(b) and her niece, § 87(2)(b). Police Officer Richard Moore and Police Officer Thomas Hionas, both of the 61st Precinct, responded to § 87(2)(b) spoke with § 87(2)(b) and left the scene. PO Moore failed to provide § 87(2)(b) with a business card (**Allegation A: Abuse of Authority- Failure to provide RTKA card – § 87(2)(g)**).

Later that evening, at approximately 7:08 p.m., § 87(2)(b) called 911 again in regards to the same family dispute. PO Moore, PO Hionas, Sergeant Michelle Figueroa and other officers from the 61st Precinct responded to § 87(2)(b) and spoke with § 87(2)(b) and § 87(2)(b). Sgt. Figueroa supervised the entry and search of § 87(2)(b) in Brooklyn (**Allegation B: Abuse of Authority- Entry of premises – § 87(2)(g)**; **Allegation C: Abuse of Authority- Search of premises – § 87(2)(g)**). Sgt. Figueroa supervised the entry of § 87(2)(b) § 87(2)(b) in Brooklyn (**Allegation D: Abuse of Authority- Entry of premises – § 87(2)(g)**). Sgt. Figueroa allegedly failed to provide § 87(2)(b) with a business card (**Allegation E: Abuse of Authority- Failure to provide RTKA card – § 87(2)(g)**). Sgt. Figueroa forcibly removed § 87(2)(b) to § 87(2)(b) Hospital (**Allegation F: Abuse of Authority- Forcible removal to the hospital – § 87(2)(g), § 87(4-b)**).

Body Worn Camera video evidence was obtained for this incident (Board Review 01).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Richard Moore failed to provide § 87(2)(b) with a business card.

According to the Event and 911 audio, § 87(2)(b) called 911 to report that her sister, § 87(2)(b) and niece, § 87(2)(b) were threatening her and stated that they had guns (Board Review 17).

§ 87(2)(b) alleged that when PO Moore and PO Hionas arrived she asked for their business cards and that only PO Hionas provided his business card by leaving it at her apartment's doorstep (Board Review 04, Board Review 24).

As depicted in PO Moore's Body Worn Camera (BWC) footage in IA#52 (VLC timestamp 00:30), PO Hionas and PO Moore questioned § 87(2)(b) about her 911 call.

As depicted in PO Moore's BWC footage, located in IA #51 at VLC timestamp 6:00, § 87(2)(b) asks PO Moore and PO Hionas for their business cards (Board Review 01, Board Review 03). PO Hionas provides his courtesy card to § 87(2)(b) by leaving his card at the base of the front door of § 87(2)(b) before reentering his marked patrol car. In the patrol car, PO Moore tells PO Hionas "Don't leave a card. She's an EDP, you're gonna leave a card with an EDP?" (This statement was made in the patrol car, out of § 87(2)(b)'s earshot, and was therefore not pleaded.) PO Moore left without providing his business card to § 87(2)(b).

According to NYC Administrative Code, Section 14-174 (Board Review 25), an officer shall provide a Right to Know Act card upon request, during a law enforcement activity, unless (1) Such officer is engaged in an approved undercover activity or operation, and law enforcement activity is taken pursuant to such undercover activity or operation; (2) Exigent circumstances

require immediate action by such officer; (3) Such officer reasonably expects that he or she or any other person is in danger of physical injury or that there is an imminent risk of damage to property, or to forestall the imminent escape of a suspect or imminent potential destruction of evidence; (4) Such officer is conducting a security search of a person or property, including a consent search or identification check where such search or identification check is predicated upon entrance to a public building or facility, location, event, or gathering, including random security checks of backpacks and containers conducted in facilities operated by the metropolitan transportation authority, provided, however, such officer shall be required to identify himself or herself and offer a business card when such information is requested by the person who is the subject of such search or identification check; or (5) Such officer is verifying the identity of a person seeking entry to an area access to which is restricted by the department due to a public health, public safety or security concern, such as a terrorist attack or natural disaster.

Investigatory questioning of a victim of or witness to a crime is a law enforcement activity.

PO Moore and PO Hionas arrived at the location to investigate a crime reported by § 87(2)(b) and questioned her as the victim. § 87(2)(g)

Allegation B – Abuse of Authority: Sergeant Michelle Figueroa entered § 87(2)(b) in Brooklyn.

Allegation C – Abuse of Authority: Sergeant Michelle Figueroa searched § 87(2)(b) in Brooklyn.

Allegation F – Abuse of Authority: Sergeant Michelle Figueroa forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(g), § 87(4-b)

It is undisputed that Sgt. Figueroa forcibly removed § 87(2)(b) to § 87(2)(b) Hospital.

According to the Event and 911 audio, § 87(2)(b) called 911 at 6:30 p.m. to report that her sister, § 87(2)(b) and niece, § 87(2)(b) were threatening her and stated that they had guns, and that they were downstairs speaking with NYPD officers (Board Review 04, Board Review 17). § 87(2)(b) also stated that her ex-husband, who was an undercover police officer, wanted to kill her, and that she was hiding in her apartment. § 87(2)(b) provided descriptions of § 87(2)(b) and § 87(2)(b) describing them as two white females, one wearing a white hat with a blue coat and cane and the other wearing all black.

As depicted in PO Moore's Body Worn Camera (BWC) footage in IA#52 (VLC timestamp 00:30), at 6:35 p.m., PO Hionas and PO Moore responded and spoke with § 87(2)(b) who remained in her house's third-floor front balcony and refused to descend or allow the

officers to enter her home (Board Review 03, Board Review 21).

According to the Event and memo books, at 7 p.m., PO Hionas and PO Moore left the scene and marked the job as unfounded and noted that there was not an emotionally disturbed person (EDP) at the location (Board Review 04, Board Review 05). In his CCRB interview, PO Hionas stated that he did not consider § 87(2)(b) to be credible because she did not cooperate with the officers. He noted that there was no discussion of removing § 87(2)(b) to the hospital during that visit.

Approximately an hour later, § 87(2)(b) called 911 again at 7:08 p.m., and requested that EMS remove § 87(2)(b) to the hospital (Board Review 06). As depicted in PO Moore's BWC footage in IA #53 (VLC timestamp 00:30), Sgt. Figueroa, PO Pervizi, PO Hionas, PO Moore and other officers arrive and speak with § 87(2)(b) and § 87(2)(b) on the sidewalk. § 87(2)(b) and § 87(2)(b) present text messages from § 87(2)(b) to PO Hionas and PO Moore, who review them. PO Hionas tells § 87(2)(b) that the text messages are just a dispute and do not constitute harassment (Board Review 01). Later in the conversation, as shown in PO Moore's BWC footage in IA#53 (VLC timestamp 01:31), § 87(2)(b) and § 87(2)(b) tell PO Hionas and PO Moore that they believe § 87(2)(b) was drinking that evening.

During her CCRB interview, Sgt. Figueroa stated that PO Pervizi told her that § 87(2)(b) was a "known EDP" but Sgt. Figueroa could not recall any further details he provided (Board Review 07). § 87(2)(b) told Sgt. Figueroa that § 87(2)(b) calls 911 frequently and "has problems with the family." From the third-floor front balcony, § 87(2)(b) told Sgt. Figueroa that "people were watching her," and that her ex-husband was a former NYPD officer. Sgt. Figueroa could not recall the details of § 87(2)(b)'s claims but said that she was not making sense. According to PO Hionas and Sgt. Figueroa, § 87(2)(b) then threw a posterboard down onto the second-floor landing, retreated inside her house, and left the front door unlocked (Board Review 08).

At this point, Sgt. Figueroa determined that § 87(2)(b) was an EDP and was going to hurt herself because of the statements made by § 87(2)(b) to Sgt. Figueroa and what § 87(2)(b) told him about § 87(2)(b). Sgt. Figueroa believed that § 87(2)(b) was also a threat to others because of "her demeanor," the statements she made, and the fact that she was not being "very cooperative." She further stated that § 87(2)(b) was capable of harming herself, that she could have jumped from the front balcony, and that she did not know what § 87(2)(b) had inside the apartment (Board Review 07). Sgt. Figueroa believed that these factors contributed to an emergency in the house, necessitating officers' entry and search. There were no other factors that led Sgt. Figueroa to believe that § 87(2)(b) was a threat to herself or others. Sgt. Figueroa authorized the entry and search of § 87(2)(b)'s house in order to remove her to the hospital.

The other officers provided statements consistent with Sgt. Figueroa's.

According to the 911 audio, when PO Hionas radioed the request for ESU to respond, he said, "Could we get ESU over here for a wellness check? Just for a wellness check though, no EDP. ESU for a wellness check, no emergency" (Board Review 09, Board Review 13).

The alleged throwing of the posterboard, § 87(2)(b)'s retreat into her apartment, and the moment the officers entered § 87(2)(b)'s apartment are not captured on BWC due to a 45-minute gap in BWC footage, after all officers turned off their BWCs. As shown in PO Pervizi's BWC video in IA# 85 (VLC timestamp 00:00), the officers' BWC footage resumes after officers are already inside of § 87(2)(b)'s home.

According to § 87(2)(b) she did not discuss any mental health history with officers

(Board Review 10).

According to § 87(2)(b) she retreated into her house because she saw PO Moore remove a large clear shield from the trunk of his vehicle, which led her to believe that officers were about to break into her house. § 87(2)(b) barricaded herself in her bedroom by pushing a bed against the bedroom door and jumped to her neighbor's adjacent rear balcony to hide from officers (Board Review 02). § 87(2)(b) denied drinking alcohol the evening of the incident or consuming any narcotics. § 87(2)(b) alleged that officers conducted a detailed search of her apartment, stating that when she returned home, the apartment had been "raided" and "everything had been turned upside down." § 87(2)(b) provided cell phone video footage (IA #41, VLC timestamp 00:00) of her walking through her apartment after returning from § 87(2)(b) Hospital (Board Review 23) as evidence for this allegation.

As depicted in PO Moore's BWC footage in IA#55 (starting at VLC timestamp 00:00), the state of § 87(2)(b) when officers enter the apartment is identical to the state presented in § 87(2)(b)'s cell phone video. This footage depicts the search of § 87(2)(b) conducted by PO Moore, PO Hionas, Sgt. Figueroa and PO Pervizi as limited to walking through rooms, opening closets and moving clothes, in search for § 87(2)(b). The footage also depicts officers leaving the apartment along with § 87(2)(b). The investigation determined that officers did not conduct a detailed search of § 87(2)(b) as alleged by § 87(2)(b).

In order to enter a premise without a warrant, the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property and this belief must be grounded in empirical facts. People v. Doll, 21 N.Y.3d 665 (2013) (Board Review 11). A person is considered to be emotionally disturbed, and therefore must be taken into protective custody, when he appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to herself or others. NYPD Patrol Guide, Section 221-13 (Board Review 12). Once the BWC has been activated, continue recording until the investigative, enforcement, or other police action is concluded. NYPD Patrol Guide, Section 212-123 (Board Review 14).

Although officers originally arrived on scene due to § 87(2)(b)'s 911 call that she was in danger and had been threatened by her sister and niece with guns, officers found her claims to be incredible and determined that she was not in danger. Additionally, Sgt. Figueroa, who made the decision to enter and search, did not provide these facts as factors. Sgt. Figueroa stated that the only reasons she felt § 87(2)(b) was a danger to herself was (1) because she told Sgt. Figueroa that people were watching her and that her ex-husband was a former NYPD officer, and (2) § 87(2)(b) told Sgt. Figueroa that § 87(2)(b) calls 911 frequently and "has problems with the family." None of these factors suggest that § 87(2)(b) was a danger to herself or that there was an emergency or an immediate need for their assistance for the protection of life or property. Sgt. Figueroa further stated that § 87(2)(b) was capable of harming herself, and that she could have jumped from the front balcony, and suggested that § 87(2)(b) could have harmed herself with something that was in her apartment but she provided no additional factors that would have led her to reasonably believe this. In fact, no officer described any actions that indicated § 87(2)(b) was an immediate danger to herself or others.

Although § 87(2)(b) acknowledged that she climbed from the rear balcony of her apartment, § 87(2)(b) § 87(2)(b) to the neighboring rear balcony of § 87(2)(b) § 87(2)(b) no officers were aware of this action at the moment of the entry, and it therefore did not factor into their belief that she was a danger to herself at the time of the

entry.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Allegation D – Abuse of Authority: Sergeant Michelle Figueroa entered § 87(2)(b)

in Brooklyn.

It is undisputed that § 87(2)(b) was discovered by officers on the rear balcony of § 87(2)(b) the rear balcony adjacent to § 87(2)(b) § 87(2)(b) and handcuffed in the bedroom. Body Worn Camera footage also captures this discovery (Board Review 01). In PO Caine’s Body Worn Camera footage, he exits § 87(2)(b) and has a conversation with two male neighbors about accessing § 87(2)(b) rear balcony after officers fail to locate § 87(2)(b) in § 87(2)(b) (Board Review 01, Board Review 22). PO Caine asks, “How can we get back there? To the balcony?” Although the neighbors’ response is partially inaudible, one male neighbor mentions offering “keys” and another says, “Happily.” Overall, the conversation is calm and respectful.

According to Sgt. Figueroa, the tenants of § 87(2)(b) provided consent verbally for officers to enter after the officers failed to locate § 87(2)(b) in § 87(2)(b)

The other officers provided statements consistent with Sgt. Figueroa’s.

Based on the consistency between officer statements and Body Worn Camera footage capturing a conversation where the neighboring tenants apparently enthusiastically responded to PO Caine’s proposition for officers to check their rear balcony, § 87(2)(g)

Voluntary consent from a resident of a home justifies a warrantless entry into that home. People v. Gonzalez, 39 N.Y.2d 122 (1976) (Board Review 26). “Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle.” Gonzalez [same as above].

As shown in the Body Worn Camera footage, and as corroborated by the officer testimony, the residents of § 87(2)(b) voluntarily consented to the officers entering their apartment to look for § 87(2)(b) § 87(2)(g)

Allegation E – Abuse of Authority: Sergeant Michelle Figueroa failed to provide § 87(2)(b)
with a business card.

§ 87(2)(b) alleged that after she was discovered on the rear balcony of § 87(2)(b)

§ 87(2)(b), but prior to being placed in the ambulance, she asked Sergeant Figueroa to provide her business card and Sgt. Figueroa did not do so (Board Review 04).

Sgt. Figueroa's BWC footage in IA #89 (VLC timestamp 00:00) captures the entirety of Sgt. Figueroa's interactions with § 87(2)(b) from the discovery of § 87(2)(b) on the rear balcony of § 87(2)(b) by ESU officers to her being lodged into an ambulance (Board Review 01). At no point during this portion of the incident does § 87(2)(b) ask Sgt. Figueroa for a business card.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
- Sgt. Figueroa has been a member-of-service for nine years and has been a subject in one CCRB complaint and one allegation, which was not substantiated.
- PO Moore has been a member of service for 11 years and has been the subject of two CCRB complaints and three allegations, none of which were substantiated.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- On February 8, 2019, § 87(2)(b) filed a Notice of Claim with the City of New York claiming injury and property theft and seeking various amounts as redress (Board Review 10). There is no 50H hearing scheduled.
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____

	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date